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TAGS: [PARM](#) [MNUC](#) [PREL](#) [KNNP](#) [EUN](#)
SUBJECT: EU NON-PAPER REQUESTING PARTICIPATION IN PSI

Classified By: Classified by POLMINCOUNS Larry Wohlers, for reasons 1.4(b) and (d).

1.(C) In a May 12 meeting with CDA Murray, Annelisa Gianella, EU Special Representative for Non-Proliferation, provided the attached non-paper on the EU's request to participate in the Proliferation Security Initiative with a view toward U.S. positive consideration of the EU's request for an invitation to the May 28 PSI 5th anniversary plenary meeting. Gianella claimed that all EU member states support an EU delegation seat at the PSI table, including especially Germany, Italy and France. However, she conceded that the UK had reservation in deference to U.S. concerns. She noted that the paper was not cleared formally by the Commission or EU member states, but should be regarded as an informal submission by the Council Secretariat with input from the Commission.

12. (C) Department may recall that Gianella had promised the non-paper to Acting A/S McNerney during recent US-EU Troika meetings on non-proliferation in Brussels (to be reported septel). In that meeting, McNerney had advised Gianella to address U.S. concerns that EU participation would unnecessarily bureaucratize the PSI. Despite Gianella's description of the non-paper as "pragmatic" and not "legalistic," it does not appear to address U.S. concerns directly. The discussion focuses on now-familiar EU arguments that it provides the capacity-building expertise and enforcement of existing EU regulation in PSI-related areas such as law enforcement and export controls. While not stated explicitly in the paper due to possible member states sensitivities, Gianella further argued that EU participation in PSI would be useful to spur smaller EU member states to become more active on these issues, including closer cooperation with the United States in this regard. She did not provide concrete examples in the meeting or in the paper. CDA Murray undertook to convey the non-paper to Washington, but demurred on the possibility of change in the U.S. position on EU participation in the May PSI meeting.

13. (SBU) Begin Text of EU non-paper:

EU PARTICIPATION IN PSI

I) Why PSI would gain from an EU participation in its own right

Five years after the launch of the Proliferation Security Initiative (May 2003) there is still an uncertainty as to the role the EU could play in PSI. Up to now the operational character ("activity") and the wish to avoid a heavy mechanism has led to the result that only individual Member States of the EU are members. The representatives of EU institutions have only been allowed to participate as members of a delegation of an EU Member States. This practice does not reflect the real role which the EU plays in areas which

are key to the initiative and overlooks that many areas which are at stake are not any longer dealt with by individual Member States. Therefore Member States have repeatedly expressed their wish to see the EU level/institutions participate in its own right, since it is not possible for them to deliver individually on issues of common EU policy (some of which, such as the common commercial policy, fall under the exclusive Community competence) or where the EU has an added value in ensuring a coordination. They wish to see the EU represented in PSI in the same way as it is already the case in GICNT.

II) Examples of areas of common activities at the EU level, which are no longer dealt with exclusively at the level of individual EU Member States

The EU Member States have transferred important tasks to the EU level. This means that European activities which are key to PSI have their center of gravity in Brussels.

1) Common definition of Foreign and Security Policy priorities of the EU by the Council, such as:

a) how to concretely implement the EU WMD Strategy and various actions contained therein, which also fall under UNSC Resolution 1540,

b) how to direct EU efforts towards common aims (in particular implementation of the EU/US Joint work programme of 2005 specifically mentioning EU-US cooperation in advancing PSI through the enhancement of capabilities, laws and regulations to improve our readiness for interdiction actions and by encouraging PSI countries to support enhanced

cooperation against proliferation networks, including tracing and halting transactions related to proliferation),

b) definition of contents of EU sanction regimes following UNSC resolutions,

c) geographical priorities for outreach activities and assistance programmes,

d) definition of negotiation mandates for future agreements between EU and third countries.

2) Adoption of Community legislation by the Council of the EU (and the European Parliament), which is directly binding for all 27 Member States. Some examples relevant for PSI:

a) Customs legislation

b) Transport legislation

c) Trade policy

d) Internal Market legislation (binding rules for the limits and freedoms of economic flows of goods, services and persons within the EU)

e) Export controls: binding legislation on dual-use items and technology

f) Proliferation finance (European Commission is a full member of the Financial Action Task Force)

3) EU institutions are also implied in the implementation of the EU's decisions and in charge of ensuring that Community legislation is effectively implemented by our Member States. The Secretary-General of the Council in his function of High Representative for the CFSP - and his services - assist the Council in matters coming within the scope of the CFSP, such as those addressed by the PSI, including through implementation of policy decisions.

In the sphere of Community law, the Commission ensures that the Community measures are applied, and it exercises in many instances the powers conferred on it by the Council for the implementation of Community rules. If the Commission considers that a Member State has failed to fulfill an obligation under Community law, it can commence an infringement procedure before the Court of Justice of the Community. If the Member State concerned does not take the

necessary measures to comply with a judgment of the Court in such procedures, the Commission can ask the Court to impose a penalty payment on this Member State.

4) The EU runs a whole range of assistance programmes with substantial financial means, which are directly or indirectly relevant for non-proliferation (eg. assistance programmes in order to enhance physical protection, national capabilities to fight against illicit trafficking, border and export controls, etc. financed through Joint Actions or Community Programmes, in particular now the Stability Instrument).

III) Practicalities: a direct participation of EU institutions would be the most efficient and operational way to ensure a rapid and concrete European contribution to PSI

All members of PSI, including those which are Member States of the EU, are interested in making this initiative result-oriented and practical. Talking to 27 individual Member States, while excluding the EU institutions (which hold keytasks and responsibilities) is certainly a complicated and cumbersome way to try to ensure maximum output in the fields mentioned above. It would clearly be more efficient to involve also EU actors directly, who will ensure that relevant political decisions and pieces of legislation are being fed into the EU machinery at the right juncture, who will look after the implementation in Member States afterwards and who are steering relations with relevant third countries.

In practice this would mean that there would be one single delegation of the European Union, which would include senior officials or experts from the Council Secretariat and the European Commission according to the level required and the issue to be discussed. The EU Delegation would intervene on issues on which the EU exercises a role.

This should not be seen as an exception to the rule of not inviting organisations with no operational role, since EU Member States have already transferred operational powers in many important areas to the EU level. This is the main difference to other international and regional organisations such as ASEAN and African Union, which do not have any such powers on behalf of their member states. The "supra-national" character of the EU/Community indeed is unique and therefore

makes it an important operational (and not purely political) actor. The weight of the EU has already been taken into account in GICNT, in which the EU is accepted as observer. The same reasons should logically apply for PSI.

The EU shall participate in its own right at the PSI Plenary meeting. Thus far, the Plenary meeting were open to all states which endorsed PSI interdiction principles, thus to all EU Member States and the discussion was of a political nature. The Washington meeting (28 May) which will mark the 5th Anniversary of the PSI could serve as the first opportunity to grant the EU an official status.

The EU should continue to participate in the European regional PSI meetings, such as in Hamburg in 2005. A valuable operational contribution of EU institutions to PSI was recognized at the Hamburg meeting.

The EU should also participate in the operational experts meetings (in the Legal and Law Enforcement Groups with Commission and Council Secretariat experts, and in the Intelligence Group with Members of the Joint Situation Centre) to the extent to which it can contribute to the discussions in accordance with its tasks and competencies.

END TEXT OF NON-PAPER.

MURRAY